

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Village of Tilton, Vermilion County, Illinois
Petitioner

vs.

Norfolk and Southern Railroad and State of Illinois, Department of
Transportation,
Respondents

T00-0103

Petition for an Order regarding a separation of grades and
construction of a bridge carrying 14th Street (FAU 7010), Village
of Tilton, Vermilion County, Illinois, over the tracks of said
Railway Company, apportioning cost thereof and directing an
appropriate portion thereof to be borne by the Grade Crossing
Protection Fund.

ORDER

On January 4, 2001, the Illinois Commerce Commission ("Commission") held the first hearing in this matter before a duly authorized Administrative Law Judge at the Commission's Springfield office. Present at the hearing was counsel for the Norfolk Southern Railway Company ("NS"). Representatives of the Village of Tilton ("Village"), the Illinois Department of Transportation ("IDOT" or "Department"), and staff of the Commission's Rail Safety Section were present and participated in the hearing. Pursuant to a pre-hearing conference, it was discovered that CSX Transportation, Inc ("CSX") will be a necessary party to this Docket and the matter was continued in order for the Village to file an Amended Petition naming therein CSX Transportation, Inc as a Respondent. The NS and CSX are also referred to as ("Railroads").

On May 1, 2001, an additional hearing was held at the Commission's Springfield office. Present at the hearing was counsel for the Village and the NS. A representative of IDOT and the staff of the Commission Rail Safety Section were present and participated in the hearing. The Village Consulting Engineer provided information concerning certain aspects of the existing and proposed improvements. Plans were presented and the phases of the projects were reviewed, along with preliminary costs for the aforementioned improvements.

On December 5, 2001, the Commission entered its Interim Order that approved the 14th Street project in the Village, involving the reconstruction/realignment of 14th Street and the construction/reconstruction of highway overpass structures carrying 14th Street over the tracks of the NS and

CSX as a safety improvement project and granted permission to the parties to proceed with the project under certain conditions. The Commission granted permission to the Village to proceed with the preliminary engineering, Phase 1 and 2, pertaining to the 14th Street project. The Village was required to submit the Phase 1 plans and cost estimate separated into (1) the cost for the NS highway overpass structure; (2) the cost for the CSX highway overpass structure, and (3) the cost for the immediate highway approaches to the highway overpass structures. The initial costs toward the preliminary engineering for the project was allocated to the Grade Crossing Protection Fund ("Fund") in the amount of \$618,500 as contained in Finding (4) of the Interim Order. It was the intent of the Commission to issue further Order(s) in this matter increasing the Fund participation to the maximum amount as set forth in Finding (4) of the Interim Order only after a written request from the Village was received by the Director of Processing and Information, Transportation Division of the Commission, stating the need for additional payments from the Grade Crossing Protection Fund.

The Commission received the required notification and a hearing on the construction phase of the project was scheduled at the Commission's Springfield office on February 21, 2002. Instead of taking testimony on the construction phases of the project, a new matter pertaining to mine subsidence in the area of the project was discussed. Testimony on the construction phases of the project was not presented at this hearing. From testimony provided by a mine subsidence expert, Dr. Marino, a potentially costly and/or unsound situation from mine subsidence could possibly occur over and/or near the mined out areas under the project, which are primarily east of and somewhat west of the proposed NS structure. On May 8, 2002, the commission entered its Supplemental Interim Order that granted permission for a study of the mine subsidence in the area of the proposed construction. The cost for this study was estimated to be \$283,400. At a hearing on November 20, 2002, the Mine Subsidence Study was presented to the parties for their review, which confirmed the potential for subsidence and estimated the costs of mine grouting remediation alternatives. The matter was continued until January 22, 2003, to give the parties time to review the subsidence study and recommendations.

Discussions between IDOT, Village and staff ensued regarding various options for dealing with future mine subsidence on the project. Dr. Marino indicated grouting the mined out area under the project is the most reliable method of preventing future subsidence, and estimated the additional cost to grout the mined out areas under the project to be approximately \$1,000,000. The Village is particularly concerned about any future maintenance costs or liabilities resulting from subsidence because of their relatively low revenue generating capabilities. IDOT is opposed to grouting under the project because of the added expense, the potential for higher than anticipated grouting costs, their relatively successful record to date of building structures over mined out areas, and their desire not to set a precedent for grouting mined out areas under structures. The use of lightweight cellular concrete fill versus normal earthen

embankment materials in order to minimize the weight of the embankment was investigated somewhat. This would reduce the probability of future subsidence but would likely add approximately \$500,000 to the project cost if used. IDOT is of the opinion that the structure should be constructed to accommodate future subsidence movements as much as possible with a minimum of damage, and that the damage resulting should be repairable to the maximum extent possible. IDOT further directed the use of extensible geotextile (non-metallic) soil reinforcement whenever possible over the mined out areas coupled with some form of two-stage Mechanically Stabilized Earth (MSE) wall which involves an inner geotextile and/or wire wall which will move with subsidence, yet still contain the embankment fill, should the outer concrete panel wall need to be removed for repairs. The MSE wall to be constructed involves the above referenced concept east of the NS structure, where it can be reasonably executed, coupled with the use of limited size rectangular panels throughout to permit the most movement without damage, and with future adjustability to be built in to the two-stage walls to maximize re-use of face panels should they require future adjustments. Further, the top layer of the embankment under the pavement is composed of an open graded material which can be pumped with grout using slab jacking techniques in the future to help straighten out subsidence areas somewhat under the pavement should they develop. The additional cost for the two-stage MSE wall construction, where used, is estimated to be on the order of \$250,000.

On October 8, 2003 and October 29, 2003, hearings were again held at the Commission's Springfield office. At the October 8, 2003, hearing, counsels for the NS, CSX, and Village entered appearances for their clients. Representatives of IDOT and staff of the Commission's Rail Safety Section were present and participated in the hearing. At the October 29, 2003, hearing, the same parties were present except counsel now represented IDOT. At the October 29, 2003, hearing, the parties stated that a cost division had been agreed to but through a pre-hearing conference, it was learned that the cost division has approximately \$150,000 unfunded. The parties asked for a continuance to continue discussion on the cost division and the matter was set for a December 10, 2003, hearing.

As shown on the most recent plans presented by the Village, the proposed 14th Street improvements generally follow the existing roadway alignment. The project shall be constructed on the existing alignment or a new alignment as agreed on by each Agency. The 14th Street Improvements Project begins at Sta. 265+00 and ends at Sta. 301+00. The ICC eligible portion of the project consists of the improvements along 14th Street from Sta. 265+00 to Sta. 288+00 including all side road connections and appurtenances and is generally described as follows. The typical pavement section over the CSX RR consists of a 3-lane (13'-12'-13') concrete pavement with a concrete sidewalk (10') along one side of the roadway. The span of the 3-sided pre-cast concrete bridge over the CSX RR is 42'-0". The typical pavement section over the NS RR varies from a 3-lane (13'-12'-13') to a 2-lane (13'-13') concrete pavement with a concrete sidewalk (10')

along one side of the roadway. The span of the reinforced concrete deck bridge constructed over the NS RR is 97'-4 7/8" in length. In general, the typical pavement section from Sta. 285+00 to 301+00 is a 3-lane (11'-12'-11') concrete pavement with a concrete sidewalk (5') on both sides of the roadway. In order to undertake and complete the proposed construction, easements must be obtained from CSX and NS.

On May 3, 2004, the NS sent correspondence to Mr. Schuering, counsel for the Village, outlining NS's understanding of its cost for the project. NS stated that the total cash contribution from the NS toward the project pertaining to its railroad should not exceed \$380,000, which will be paid in a lump sum upon completion and final acceptance of the project. Secondly, NS wishes that its force account work, estimated to be \$144,250, to accommodate the construction of the proposed bridge and roadway work, be 100% reimbursable at project expense and be separate and distinct from NS's lump sum contribution. Railroad flagging costs are already included in the calculation of the construction cost for this project, and will also be 100% reimbursable at project expense.

On May 14, 2004, staff forwarded a proposed cost division for the project to all the parties for their review and response. On May 27, 2004, May 28, 2004, and June 3, 2004, responses were received from the CSX and IDOT, respectively. Mr. Cook, counsel for CSX, states in his Response to staff's proposed cost division that the correct CSX force account amount is \$75,427. A revised estimate is attached to the CSX Response. The same conditions on lump sum payments and flagging costs are the same as listed in the proceeding paragraph for the NS.

In a letter dated May 20, 2004, Mr. Dan Schuering, counsel for the Village, advised that costs for railroad flagging will be borne by the bidding contractor in an effort by the Village to control the contractor's costs, to wit: "the contractual specifications and project documents clearly provide that this cost is a responsibility of the contractor for which the project will not provide, to the contractor, additional compensation in the event additional days of railroad flaggers are necessary. Railroad flagging costs have been otherwise included as a cost to be paid by the bidding contractor and have been included as a construction cost line item." The Village continues: "In the event additional days of flagging are necessary, or in the event that flagging costs are incurred in excess of those identified in the force account estimate of CSX, the Village of Tilton has assured CSX that the bidding contractor will reimburse CSX those additional cost as billed by CSX. The Village has represented that by inclusion of flagging cost as a construction cost line item, it has not intended to eliminate any necessary railroad flagging operations or to reduce CSX's reimbursement for those flagging costs". The Village further recommended that any Commission Order in this matter include a clarification that CSX will be reimbursed by the bidding contractor for its flagging cost as billed, even if in excess of the construction cost line item. The same provisions apply to the NS.

IDOT'S Response to the Staff's Proposed Cost Division, filed by Stacey Hollo, counsel representing IDOT, stated that IDOT has no objection to the proposed cost division provided that the Commission and the Railroads' amounts are regarded as lump sum amounts to be paid regardless of the actual project costs. In support of its position, IDOT noted that the Commission and Railroad's figures are below the customary percentages expected in this type of project and IDOT has been assessed a majority of the project costs. Accordingly, IDOT submitted that if the project comes in under the estimated cost any savings should be applied to IDOT'S portion and not to the Commission or Railroad costs until a 60% and 5%, respectively, allocation of costs is met. Staff disagrees. This project was necessitated by IDOT'S project on Ill. Rte 1 and staff advocates that if the cost of the project is less than the estimated cost, all the parties should participate in the savings or overruns per the percentages as listed in Appendix A, attached hereto.

On June 3, 2004, CSX filed a response to IDOT'S response to Staff's Proposed Cost Division reiterating it's previous position and requests.

On June 29, 2004, the Commission entered its Second Supplemental Interim Order that required the Village to proceed with the construction phase of the project and allocated the remaining \$4,016,600 from the Fund, which is minus the payments already obligated from the Fund for preliminary engineering and the mine subsidence study obligated by previous Interim Orders.

On August 13, 2004, the Commission received the Department's MOTION TO STRIKE. At the hearing on October 27, 2004, the Administrative Law Judge denied the Department's MOTION TO STRIKE.

Counsel for the NS stated that its bridge department had reviewed the revised plans, has held discussions with the Village's Engineer, and has no objection to the construction of the highway overpass structure carrying 14th Street over the tracks of the NS and to the associated roadway work.

On October 27, 2004, a final hearing was held at the Commission's Springfield office. A member of the Commission's Rail Safety Section made an appearance at the hearing. He testified that all required estimates and other documents have been received. Admitted at the hearing was Village Exhibits No. 13, 14 and 15. Village Exhibit No. 13 is the Engineer Affidavit stating the in his judgment as an Illinois Certified Structural Engineer, the solution provided involving two-stage mechanically stabilized earth retaining walls over the primary subsidence prone area east of the NS is an appropriate solution for the subsidence situation. The mitigation measures taken are judged to reduce the damage and make the damage more repairable should a subsidence event affect the structure(s), but will not remove the potential for damage or hazards resulting from a subsidence event. This is predicated also on the costs to install such a

solution are not prohibitive, that periodic observations and inspections of the structure for distress are performed, and a commitment by IDOT to assist the Village in obtaining funding for any required future subsidence related repairs. IDOT has agreed to assist the Village in obtaining emergency funding from the General Assembly in the case of the subsidence event. Exhibit No. 14 is a letter from District 5 Local Roads and Streets Engineer, stating that the "Department" approves the use of a "two stage" mechanically stabilized earth wall over the mined areas for the NS bridge structure project. Village Petitioner's Exhibit No. 15 is the revised plans for the NS structure. Staff is of the opinion that all the pertinent parties have approved the revised plans. At the hearing on October 27, 2004, the matter was marked "Heard and Taken."

The Commission, having due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction of the parties hereto and the subject matter hereof;
- 2) The recitals of fact as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- 3) The Village of Tilton should be required to proceed with the construction of the 14th Street highway overpass structure over the track of the NS and the reconstruction of the existing highway overpass structure carrying 14th Street over the track of CSX and other associated work, substantially as shown on Village's Exhibit No. 15;
- 4) In the event of a mine subsidence event that damages the NS structure, the Department has agreed to assist the Village in obtaining emergency funding from the General Assembly for repairs;
- 5) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- 6) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law and its own funds, the Village of Tilton, the Norfolk Southern Railway Company, and CSX Transportation, Inc, be directed to bear their respective portions of the actual cost of the proposed improvements as set forth in the table attached as Amended Appendix A at the end of this Order; the amount already obligated from the Fund through previous Interim Orders shall not exceed \$4,918,500; the amount to be paid by the NS and CSX shall not exceed \$380,000 and \$124,677, respectively; (the NS and CSX payments will be lump sum payments); the NS's and CSX's force account work, estimated to be \$144,250 and \$75,427, respectively, is 100%

reimbursable at project expense and is separate and distinct from NS's and CSX's lump sum payments; the Village will pay a lump sum payment not to exceed \$89,020; all remaining cost will be borne by IDOT; all cost of future maintenance of both highway overpass structures, highway approaches thereto, and associated roadway improvements, shall be borne by the Village (see Finding 4 for procedure in the event of a subsidence event); in the event the final cost for the required work is less than estimated, the final cost should be divided between the parties in the same percentages as listed in Appendix A, attached hereto; likewise, if the cost of the required work is more than the estimated cost, the Village shall file a Supplemental Petition with the Commission requesting that the final increased cost be divided between the parties, preferably in the same percentages as listed in Appendix A, attached hereto;

- 7) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or Order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that permission be, and it is hereby granted, to the Village of Tilton to proceed with the construction phase of the 14th Street project, substantially in the manner and location as set forth in Village Exhibit No Exhibit 15.

IT IS FURTHER ORDERED that the Village of Tilton be, and it is hereby, required and directed to proceed immediately in performing its work substantially as described in the prefatory portion of this Order and to Petitioner's Exhibit No. 15 and shall complete its work within thirty-six (36) months from the date of this Order.

IT IS FURTHER ORDERED that the Illinois Department of Transportation has agreed to assist the Village of Tilton to obtain emergency funding from the General Assembly in the event of a subsidence event that causes damage to the new structure due to limited funds available to the Village.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Finding (6) herein and Appendix A, attached hereto. The bidding contractor will reimburse CSX and NS for its flagging costs as billed, even if in excess of the estimated cost. The Grade Crossing Protection Fund has already obligated the maximum sum of \$4,918,500 toward the preliminary engineering, subsidence study and construction phase of the

project through the Interim Orders. This final Order does not obligate additional Grade Crossing Protection Fund monies.

IT IS FURTHER ORDERED that since federal funding may be utilized for the grade separation and roadway improvements at the subject crossings, all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit of the Illinois Department of Transportation's District 5 Bureau of Local Roads and Streets, 13473 IL Hwy. 133, P.O. Box 610, Paris, Illinois, 61944. The Department shall submit a copy of all bills to the Director of Processing and Information, Transportation Bureau of the Commission. The final bill for expenditures from the Village of Tilton and/or the Railroads shall be clearly marked "Final Bill". In addition, authorization for reimbursement from the Grade Crossing Protection Fund for this project shall expire, and the Department shall de-obligate all remaining Grade Crossing Protection Fund dollars, twelve (12) months after the completion date specified in this or any Supplemental Order for this project issued by the Commission.

IT IS FURTHER ORDERED that the Village of Tilton shall within one hundred twenty (120) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the construction plans applying to the construction and reconstruction of the aforementioned grade separation structures.

IT IS FURTHER ORDERED that Village of Tilton shall file a written report with the Director of Processing and Information, of the Commission's Transportation Bureau, within fifteen (15) days of the conclusion of each calendar quarter, stating the status of the billing for Grade Crossing Protection Fund reimbursement applying to their portion of the project and the percentage of completion of their portion of the project; if any portion of the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

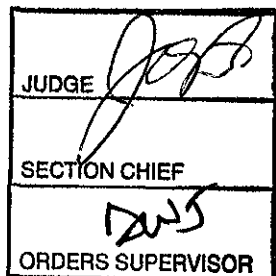
IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall within five (5) days of the completion of the highway overpass structure over its track, submit to the Director of Processing and Information, a United States Department of Transportation Inventory Form (#6180.71) as notice of the change in the 14th Street crossing status.

IT IS FURTHER ORDERED that CSX Transportation, Inc. shall within five days of the completion of the reconstructed highway overpass structure over its track, submit to the Director of Processing and Information, a United States Department of Transportation Inventory Form (#6180.71) as notice of the change in the status of the 14th Street crossing status.

IT IS FURTHER ORDERED that the Village of Tilton shall submit to the director of Processing and Information within five (5) days of the completion of the work herein required of it, a written notice of said completion.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 24th day of February, 2005.



Edward C. Hurley 2

Chairman

AMENDED DIVISION OF COST
14TH STREET BRIDGE AND ASSOCIATED IMPROVEMENTS (MFT Section 00-00026-00-BR)
TILTON, IL (12-13-04)

Item	Suggested Division of Cost							Total Cost	COST SUMMARY			
	ICC GCPF Funds	Railroad Funds		Local/State Funds			Total Cost		ICC Eligible Cost	NON ICC Eligible Cost	Total Cost	
		CSX	NS	Tilton MFT Funds	IDOT TARP Funds	IDOT Construction Funds (Ramp Credits)						IDOT Construction Funds
Construction	3,279,480	49,250	235,750	58,000	114,600	676,000	3,827,540	8,240,620	7,174,060	1,066,560	8,240,620	
Preliminary Engineering(PH I) (PH II)	1,101,000						419,200	1,520,200	1,332,200	188,000	1,520,200	
Construction Engineering (PH III)	538,020						515,980	1,054,000	887,500	166,500	1,054,000	
ROW 7 Land Acquisition				31,020			500,980	532,000	532,000		532,000	
Railroad Force Account		75,427	144,250					219,677	219,677		219,677	
Est. Total Project Cost	\$4,918,500***	\$124,677*	\$380,000*	89,020*	\$ 114,600	\$ 676,000	\$5,263,700**	\$11,566,497	\$ 10,145,437	\$ 1,421,060	\$11,566,497	
% Participation ICC Eligible Cost	48.47%	1.24%	3.74%	0.88%	1.14%	6.66%	37.87%					

See Finding (6) of the Order for particulars on maximum cost to the parties.

* Lump Sum Payment

** percentage based upon IDOT figure minus NON ICC eligible cost

*** Fund Amount already obligated through previous Interim Orders